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CONSTITUTIONAL LAW - FORCE AND EFFECT OF CLAUSES PROVIDING FOR PAYMENT OF PRIVATE INDEBTEDNESS IN GOLD

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CONSTITUTIONAL LAW — FORCE AND EFFECT OF CLAUSES PROVIDING FOR PAYMENT OF PRIVATE INDEBTEDNESS IN GOLD — Certain Belgium company bonds were issued providing for payment of interest “in sterling in gold coin of the United Kingdom of or equal to the weight and fineness existing on September 1, 1928.” After England had left the gold standard the issuing company sought to make interest payments in depreciated pounds. Plaintiff bondholder sought to enforce payment of sufficient depreciated currency to enable him to purchase on the day of payment gold in the same quantity as he would have received had payment been due September 1, 1928. The English House of Lords held for plaintiff, reversing the decision of the Court of Appeal.¹ The court felt that the “gold clause could have no meaning unless it was intended to guard against depreciation of the currency . . . in which the debt was payable.”² *Feist v. Société Intercommunale Belge D'Électricité*, reported in: London Times, December 16, 1933, p. 4; New York Times, December 16, 1933, p. 2, and December 31, 1933, p. 7N; U. S. LAW WEEK, January 9, 1934, index p. 397.

In so holding the court not only construed the obligation as being a contract in effect to pay in gold bullion,^{2a} but also by implication must have decided that the monetary legislation of Parliament did not change the tenor of the obligation so as to require acceptance of its face value in current legal tender in satisfaction. This construction of the “gold clause” corresponds with that adopted by the United States Supreme Court in *Bronson v. Rodes*,³ *Butler v. Horwitz*,⁴ and *Trebilcock v. Wilson*.⁵ In the absence of clear legislative declaration to the contrary, therefore, depreciation of the currency does not, in England or in the United States, diminish the real burden of debtors who have obligated themselves to pay in gold bullion or in gold coin of a given weight and fineness. In view of this, Congress at its last session passed an act specifically abrogating “gold clauses.”⁶ The entirely distinct question of the constitutional validity of such legislation was discussed in an earlier issue of this Review.⁷ The commentator there concludes that the power of Congress to do this is probably ample.

R. A. S.

¹ 49 T. L. R. 344 (1933), L. R. [1933] Ch. Div. 684.

² NEW YORK TIMES, December 16, 1933, p. 2, and December 31, 1933, p. 7N.

^{2a} That is, the decision of the court requires payment of “such a sum in sterling as represents the gold value of the nominal amount of each respective payment, such gold value to be ascertained in accordance with the standard of weight and fineness existing on Sept. 1, 1928.” U. S. LAW WEEK, Jan. 9, 1934, index p. 397 at 399.

³ 7 Wall. (U. S.) 229, 19 L. ed. 141 (1869).

⁴ 7 Wall. (U. S.) 258, 19 L. ed. 149 (1869).

⁵ 12 Wall. (U. S.) 687, 20 L. ed. 460 (1872).

⁶ 48 Stat. 113 (1933), U. S. C. tit. 31, sec. 463 (1933 Cum. Supp.).

⁷ 31 MICH. L. REV. 953 (1933).